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July 25, 2018

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Hank Johnson
Ranking Member
Subcommittee on Economic Development, Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives

Federal Real Property: GSA Outleasing and Restrictions on Participation of Elected Officials

GAO placed federal real property management on its High Risk List in 2003. Yet, 15 years later the federal government continues to face challenges in disposing of excess or underutilized real property that it is unable to repurpose.¹ The General Services Administration (GSA) is authorized under certain circumstances to lease unneeded space to private businesses and other nonfederal entities—a process known as outleasing.² You asked us for information on GSA's outleasing program. This report summarizes: (1) the extent to which GSA has used outleasing to substantially or wholly utilize unneeded federal real property; (2) the process GSA has followed when developing outlease agreements; and (3) the extent to which GSA has included provisions in its outlease agreements related to the participation of elected officials in these outleases.

To address our objectives, we obtained GSA data, as of June 2018, on all federal real properties identified by GSA as substantially or wholly outleased—which we defined as outleasing 20 percent or more of a building. We validated these data by reviewing leases, interviewing GSA officials, and visiting one outlease site. We reviewed relevant laws and regulations, copies of the outlease agreements, and older leases on which the current leases were modeled. We also reviewed GSA's *Outlease Program Guide*, finalized in April 2018. We interviewed officials from GSA's Outlease Program Office, GSA's Office of General Counsel, and GSA regional offices, including those involved with or knowledgeable about the outlease agreements included in our review.

We conducted our work from August 2017 to July 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and

¹For this and other reasons, federal real property remains on GAO's High Risk List today. See GAO, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, [GAO-17-317](#) (Washington, D.C., Feb. 15, 2017).

²GSA also uses outleasing to allow for retail and other limited-scope use of available space, such as putting restaurants in the food court of a federal building.

conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. This report summarizes information that we orally presented to committee staff in April 2018, updated as needed.

In summary, GSA is authorized under certain circumstances to lease unneeded space to private businesses and other nonfederal entities—a process known as outleasing. We found that GSA outleases at least 20 percent of space in six federally owned buildings, ranging from part of the space in two buildings to all of the space in four other buildings. Since outleasing involves the temporary disposal, not the acquisition, of space, GSA is not required to follow the standardized processes or to use model lease provisions contained in the General Services Acquisition Regulation (GSAR) and other documents pertaining to GSA’s more typical leasing activities. Nonetheless, in April 2018, GSA finalized a new program guide that the agency anticipates will generally introduce a more standardized approach for its officials to follow in the agency’s outleasing. GSA officials told us that GSA contracting officers will continue to have discretion in developing terms and conditions of outlease agreements, subject to the general requirement that these contracting officers must act “in the best interests of the U.S. Government.” Finally, we found that 8 of the 11 leases for the six outleased buildings that we reviewed include one or more provisions restricting certain participation by members of Congress, and three of those same provisions also restrict certain participation by elected federal executive branch officials.

Background

GSA uses its outleasing authority in two ways. The first use is to fill vacant or underutilized federal space by leasing it to nonfederal entities, which can help offset the costs of maintaining these assets. For example, GSA has outleased certain vacant historic federal buildings for hotels and underutilized space in a federal building for nonfederal office space. The second use is to allow for retail and other limited-scope use of available space, such as putting restaurants in the food court of a federal building, allowing commercial antennas on federal buildings, and using federal space to host special events and movie productions. Table 1 identifies several legal authorities that permit GSA to outlease space, depending on the particular facts and circumstances.

Table 1: Authorities GSA May Have Available to Outlease Space

Statute	Citation	Description of authority
Federal Property and Administrative Services Act	40 U.S.C. § 543	Authorizes GSA to dispose of surplus property by sale, lease, permit, exchange, or transfer.
Cooperative Use Act	40 U.S.C. § 581(h)	Authorizes GSA to lease space on a major pedestrian-access level, courtyard, or rooftop of a public building for the purpose of commercial, cultural, educational, or recreational activities.
National Historic Preservation Act	54 U.S.C. §§ 306121, 306122	Authorizes GSA to lease or exchange historic property, provided it determines that the preservation of the historic property will be adequately ensured.
Consolidated Appropriations Act, 2005	Pub. L. No. 108-447, Div. H, Title IV, § 412	Authorizes GSA to convey property by sale, lease, exchange, or other methods.
Federal Property and Administrative Services Act	40 U.S.C. § 581(d)	Authorizes GSA to lease a federal building until the property is needed for construction purposes.

Source: GAO. | GAO-18-603R

GSA Has Used Outleasing to Utilize Unneeded Federal Property in Six Federal Buildings

As of June 2018, GSA officials said that GSA had wholly or substantially outleased space in 6 vacant or underutilized federal buildings. Table 2 identifies these buildings and certain lease details, such as the duration of the leases and the lessee's current use of the space.

Table 2: Federal Buildings at Least 20 Percent Outleased by GSA, as of June 2018

Federal building and location	Lessee(s)	Lease term	Leasing authority relied on by GSA	Share of building outleased	Space use
1) Tariff Building (Washington, DC)	Tariff Building Associates, LP	1999 to 2059	54 U.S.C. § 306121	fully	hotel
2) 18 West Jackson Blvd Building (Chicago, IL)	Citizen's Official Services, Inc.	2006 to 2022	40 U.S.C. § 581(h)	fully	various food and other consumer services
	Jackson & State Currency Exchange Inc.	2006 to 2018 ^a			
	Comprehensive Business Accounting, Inc. d/b/a Jackson Hewitt Tax Service	2007 to 2018 ^b			
	Jackson Street LLC	2013 to 2018 ^c			
	Parshv Enterprise Inc.	2015 to 2025			
3) Silvio O. Conte Building (Pittsfield, MA)	Berkshire Community College	2011 to 2018 ^d	Pub. L. No. 108-447, Div. H, § 412	substantially (27% of space)	educational
	University of Massachusetts	2016 to 2022			
4) Old Post Office (Washington, DC)	Trump Old Post Office LLC	2013 to 2076	54 U.S.C. § 306121; Pub. L. No. 110-359 (Old Post Office Building Redevelopment Act of 2008)	fully	hotel
5) David W. Dyer Federal Building and U.S. Courthouse (Miami, FL)	Miami Dade College	2016 to 2081	54 U.S.C. § 306121	fully	educational
6) Spring Street Courthouse (Los Angeles, CA)	Judicial Council of Los Angeles	2017 to 2027	54 U.S.C. § 306121	substantially (27% of space)	noncriminal court, administrative, storage

Source: GAO analysis of GSA documents. | GAO-18-603R

^aThis lease expires in July 2018. According to a GSA official, as of June 2018, GSA plans to negotiate a new lease with the same tenant.

^bThis lease expired in April 2018. According to a GSA official, as of June 2018, GSA is in the process of negotiating a new lease with the same tenant.

^cThis lease expired in March 2018. According to a GSA official, as of June 2018, eviction proceedings against the tenant have been initiated.

^dAccording to a GSA official, the tenant plans to vacate the leased space at the end of its lease term in August 2018.

GSA Has Discretion in How It Pursues Outleases and Uses Prior Agreements as Models

GSA's typical leasing activity involves the acquisition of space from private entities. Accordingly, GSA is required to follow the processes and model lease provisions in the General Services Acquisition Regulation (GSAR) and it also follows GSA's general leasing-related guidance. By contrast, because outleasing involves the disposal, not the acquisition, of space, the GSAR and GSA's general leasing guidance do not apply. While GSA contracting officers preparing outleases may use those documents as references, they have discretion in developing outlease agreements subject to the general requirement that the contracting officer act in "the best interests of the U.S. Government." In April 2018, GSA finalized new guidance on outleasing called *The Outlease Program Guide* that includes, among other things: an overview of legal authorities applicable to outleasing; suggested processes to follow when pursuing various types of outlease agreements; and a checklist, templates, and forms that GSA contracting officers can use when developing outleases. GSA officials told us that contracting officials will still have discretion regarding how they pursue outlease agreements and the terms and conditions that they negotiate for those agreements, subject to the above-mentioned general requirement that contracting officials act in the best interests of the U.S. Government.

GSA's process for developing the outleases that we reviewed has varied over time, but the agency has often used prior outlease agreements as templates or starting points when new leases are written. Specifically, GSA officials told us that in developing the outleases for four of the six outleased buildings that we reviewed, the agency used prior GSA outleases as templates and added or subtracted provisions to address site-specific circumstances. In developing the outlease for one of the other two buildings that did not involve the use of a prior GSA lease—the 1999 outlease for the Tariff Building in Washington, D.C.—a GSA official involved in negotiating the lease told us it was based primarily on an early 1980s lease between the Pennsylvania Avenue Development Corporation (PADC) and Willard Associates for what became the Willard Hotel in Washington, D.C. When Congress dissolved PADC in 1996, many of its assets, including the Willard Hotel property lease, were transferred to GSA. When GSA then negotiated the Tariff Building lease for use as a hotel in the late 1990s, the GSA official told us that the agency used the Willard Hotel lease as a starting point. GSA officials also said the Willard Hotel and its land were sold to the private sector in 1999. In developing the outlease for the other building that did not involve the use of a prior GSA lease—the West Jackson Boulevard building in Chicago—GSA adopted the existing commercial leases then in effect. As those leases have expired or will be expiring in the future, GSA told us it has or will develop new leases that include applicable government clauses.

Most of GSA's Current Outleases Include One or More Provisions Restricting Certain Participation of Elected Officials

As shown in table 3, 8 of the 11 leases for the six GSA-outleased buildings that we reviewed contain one or more provisions (designated as "Interested Parties," "Restrictive Provision," or no designation) restricting certain participation by members of Congress. Three of these eight Interested Parties provisions also apply to elected federal (and even state) executive branch officials. The meaning and application of such contractual language is currently in litigation.

We found that core language in these provisions originated in federal statutes dating back before the Civil War, versions of which are still in effect today. We also found that these statutes—in contrast to the outlease provisions—only apply to members of Congress and certain other elected federal legislative branch officials, not to elected federal (or state) executive branch officials. According to the GSA official involved in negotiating GSA's Tariff

Building outlease in the late 1990s, that lease was the first time GSA that expanded the “Interested Parties” provision to apply to elected federal executive branch officials as well.³ The GSA official told us the agency used the Willard Hotel lease as a starting point for the Tariff Building lease but noted that the Willard lease only applied to members of Congress and elected D.C. Government officials. According to this GSA official, that prompted GSA to negotiate an expansion of the provision to cover elected federal executive branch officials (that is, “elected official[s] of the Government of the United States”). GSA officials also told us that, currently, inclusion of an “Interested Parties” provision in GSA outleases has become a best practice on a case-by-case basis.

Table 3: Outlease Provisions Restricting Certain Participation by Elected Officials in Space Substantially or Wholly Outleased by GSA, as of June 2018

Federal building fully or substantially outleased by GSA	Lessee and outlease provision(s)	Outlease provision language
1) Tariff Building (Washington, DC)	Tariff Building Associates, LP (Lease section 32.20)	“Interested Parties. No member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or other entity.”
2) 18 West Jackson Blvd Building (Chicago, IL)	Citizen’s Official Services, Inc. (Lease term M)	“No member of or delegate to Congress, or resident Commissioner shall be admitted to any share or part of this [L][I]ease agreement, or to any benefit that may arise there from; but this provision shall not be construed to extend to any corporation or company if the agreement be for the general benefit of such corporation or company.”
	Comprehensive Business Accounting, Inc. dba Jackson Hewitt Tax Service (Lease term M)	
	Jackson Street LLC (Lease section 25, “Restrictive Provision”)	
	Parshv Enterprise Inc. (Lease section 23, “Restrictive Provision”)	
	Jackson & State Currency Exchange, Inc.	No provision. The lease agreement for this outlease is still the original commercial lease that GSA adopted when it acquired the building. When the lease expires, GSA plans to enter into a new lease with relevant government-outlease terms.
3) Silvio O. Conte Federal Building (Pittsfield, MA)	Berkshire Community College	No provision. GSA officials said that they did not know why there was not an Interested Parties clause in these leases. In June 2018, a GSA official told us that the agency was in the process of adding an amendment to the University of Massachusetts lease agreement that would restrict certain participation by certain elected officials. The official indicated that no such amendment was planned for the Berkshire Community College lease because the tenant plans to vacate the leased space at the end of its lease term in August 2018.
	University of Massachusetts	

³Although GSA had previously negotiated at least one other federal building outlease involving all or a substantial part of the space (a 1998 outlease of a federal courthouse in Galveston, Texas), the Interested Parties provision in that lease applied only to members of Congress and other elected federal legislative branch officials.

Federal building fully or substantially outleased by GSA	Lessee and outlease provision(s)	Outlease provision language
4) Old Post Office (Washington, DC)	Trump Old Post Office LLC (Lease section 37.19 and Exhibit Q, paragraph 3, respectively)	<p>"Interested Parties. No member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or other entity."</p> <p>-and-</p> <p>"No Member of Congress shall be admitted to any share or part of any contract or Agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon."</p>
5) David W. Dyer Federal Building and Courthouse (Miami, FL)	Miami Dade College (Lease section 32.21)	"Interested Parties. No member or delegate to Congress, or elected official of the Federal Government or the Government of the State of Florida or the City of Miami, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or other entity."
6) Spring Street Courthouse (Los Angeles, CA)	Judicial Council of Los Angeles (Lease Exhibit E, paragraph D)	"No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the lease agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to any corporation or company if the agreement be for the general benefit of such corporation or company."

Source: GAO analysis of GSA documents. | GAO-18-603R

Agency Comments

We provided a draft of this report to GSA for review and comment. GSA told us that they had no comments on the draft report.

We are sending copies of this report to the appropriate congressional committees and the Administrator of the General Services Administration. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>. If you or your staff have any questions concerning this report, please contact me at (202) 512-2834 or by e-mail at rectanusl@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report were Keith Cunningham (Assistant Director); James Leonard (Analyst-in-Charge); Hannah Laufe; Susan Sawtelle; Sean Standley; and Crystal Wesco.



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